

IN THE MATTER OF

JACK C. FYOCK, JR.

Petitioner

BEFORE THE

HOWARD COUNTY

BOARD OF APPEALS

HEARING EXAMINER

BA Case No. 07-018C

DECISION AND ORDER

On October 1, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Jack C. Fyock, Jr. to permit the operation of a landscape contractor and nursery use conditional use with limited retail sales in an RR-DEO (Rural Residential: Density Exchange Option) zoning district pursuant to Section 131.N.31 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Mr. William Erskine, Esquire, represented the Petitioners. Jack Fyock, Danny Adams, and Charles Crovo appeared and testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 5th Election District on the west side of Ten Oaks Road in Glenelg (the "Property") The Property is referenced on Tax Map 22, Parcel 201, and is also known as 3950 Ten Oaks Road.
2. The Property is an irregularly shaped, 33.211-acre parcel with about 1,244 feet of frontage and is about 1,030 feet deep. The southwest portion is largely wooded. There are no structures on the Property. An existing gravel driveway about 300 feet from the Property's southeast corner runs through the nursery. A flowering shrub hedge borders a wire and post fence along Ten Oaks Road.
3. Two wholesale landscape contractors currently operate out of the northern section. Mike's Landscaping has one principal, five employees, and five vehicles.
4. The Property's southern section (about 50 percent of the site) is currently the site of a wholesale nursery (tree) operation using about 50 percent of the site. Adams Enterprises, LLC, owns the nursery. The nurseryman employs seven persons and operates six vehicles.
5. According to the petition, no complaints have been received about either operation in five years.
6. Vicinal Properties. The adjacent properties to the south and west are also zoned RR-DEO. Abutting the south side are Parcels 60 and 90, which comprise about 99.6 acres. On April 27, 2007, the County approved a subdivision plan for the two parcels (Castleberry at Ten Oaks) for 45-single family detached dwelling units and one buildable preservation parcel (F-06-130).

To the Property's west, the 13-acre Parcel 58 appears to be unimproved. Parcel 284 notches into the Property's southeast corner. Parcels 374 and 324, which adjoin the northwest section of the Property, are each improved with a single-family detached dwelling. On the Property's northeast are the B-2-zoned (Business: General) Parcels 137 (2.65 acres) and 59

(11.2), which are improved with various commercial uses. Part of Parcel 137 is an automotive repair facility.

Across Ten Oaks Road to the east and northeast are several B-2 zoned businesses, including a discount mulch operation, a school bus storage operation, and automotive repair facility. The Parcels to the southeast are zoned RR-DEO and are generally improved with single-family detached dwellings.

7. Ten Oaks Road has one travel lane in each direction and approximately 24 feet of paving within a 50-foot right-of-way. It is depicted as a Major Collector on the 2000 General Plan's Transportation Map 2020.

8. The Property is not in the Metropolitan District. It is located within the No Planned Service Area for Water and Sewer according to County GIS system maps. The proposed use would be served by private well and septic facilities.

9. The Property is designated Rural Residential on the 2000 General Plan's Policies Map 200-2020.

10. The Proposed Uses

A. General Matters

The Petitioner proposes to retain the wholesale nursery operation, add a limited retail component to it and to add a landscape contracting operation, including snow removal, and limited retail sales. The hours of operation for all uses will be 6:00 a.m. to 8:00 p.m. Monday through Friday, and 7:00 a.m. to 4:00 p.m. on Saturday. Mr. Fyock testified the purpose of the proposed conditional use was to move landscaping companies to the Property, including two contractors currently leasing other family commercial property. A third contractor would be added if the conditional use were granted.

For financial reasons, the Petitioner is requesting approval to phase in the proposed storage structures, with "A" to be constructed in the near future. Structures "B," "C," and "D" would be built over approximately an eight-year period, with a new structure going up about every two or so years. The total requested phase-in period is eight years.

B. The Landscape Contractors Operation

The primary proposed improvements will support the whole landscape contracting operation, which will be generally concentrated in the northeast section of the Property.

The landscape contracting operations will be accessed by a driveway located about 200 feet from the northern property line and terminating in a cul-de-sac about 250 feet from Ten Oaks Road. To the front of this cul-de-sac, about 100 feet from Ten Oaks Road, will be an area for 16 parking spaces (as shown on the plan). To the rear and sides of the cul-de-sac, the Petitioner proposes to construct three groups of storage bins that three separate contractors will use for topsoil and mulch storage. Each storage bin group will consist of five 20-foot-by-20-foot bins and one 30-foot bin. Two 60-foot-by-60-foot individual storage structures (marked as "A" and "B" on the revised Conditional Use Site Plan) for housing trucks and equipment for the contracting operations will be sited about 130 west of Ten Oaks Road on the driveway's south side.

The petition also states the turning movement for delivery tractor-trailers will be adequate. There will be about 15 product deliveries per day between 7:00 a.m. and 10:00 a.m. in April, May, and September, when landscaping materials are most needed, about two trips per hour in March, July, August, and October, and nominal trips in November, December, January, and February, except for snow removal. On average, the landscape contractor trucks will each make about seven trips per days, with four trips back and forth to the Property.

The Petitioner is also proposing limited retail services for this use. According to the petition, this use will generate about five trips per hour in peak months, and one trip per hour in March, July, August, and October.

According to Mr. Fyock, two landscape contractors are already tenants. One contractor's employees use company dump trucks for transportation to the site. The other contractor has seven employees, who arrive in three or four personal vehicles.

Some but not all the trucks, equipment, and tools would be stored in the storage structures, according to Mr. Fyock. The remaining would be stored in the equipment area. Mr. Fyock stated minor vehicle repairs would occur inside the large storage structures.

The Ten Oaks Road frontage near the proposed landscape contractor operation would be planted with a row of holly trees and the plan shows proposed post and rail fence along that property line.

The Petitioner is also proposing to add snow removal as an accessory use to the landscape contractor operation. Mr. Fyock testified the contractors would operate the snow removal service using the same landscape contracting trucks and adding a snowplow. The snow removal operation would service only those customers served by the landscaping contractor operations.

C. The Nursery Operation

The petition states the nursery operation is an existing conforming agricultural use. The nurseryman man desires to move some of his operation from further south on Ten Oaks Road to the subject site. The trees will range from seven to ten feet and height and will be balled for transport and off-site delivery. The Petitioner is also proposing a limited retail element for the

nursery operation, approximately two customers per week. To this end, the plan shows two additional 60-foot-by-60-foot storage structures, and five parking spaces.

Mr. Adams testified that he would like to add a limited retail operation to service clients who purchase his nursery stock. Mr. Fyock stated the nursery trees in the setback area on the Property's southern boundary would be relocated.

11. The Petitioner introduced into evidence the following exhibits.

- Exhibit 1. A revised Conditional Use Site Plan, dated October 1, 2007. The revised plan shows four separate structures and a widened equipment area.
- Exhibit 2. Excerpts from the Howard County Geographic Information Systems, showing the physical location of the Property and vicinal structures.
- Exhibit 3. A zoning map showing the location of the surrounding B-2-zoned properties in relation to the Property.
- Exhibits 4, 5, 6, and 7. A series of aerial photographs showing the Property and nearby area.
- Exhibit 8.1 to 8.34. Photographs of the Property and vicinity taken March 18, 2007. These photographs show a line of existing pine trees along part of the southern property line.

Others show the nursery operation.

12. Referring to photographic Exhibits 7.7, 7.8, and 7.9, Mr. Fyock explained the proposed structures were the same type as those in these images. Each would be metal and less than 5,000 square feet in size.

13. Mr. Crovo, a surveyor and engineer, testified that his company prepared the original and amended Conditional Use Site Plan. It was his opinion that the existing and proposed driveways were adequate for sight distance.

14. To ensure public safety, the Department of Planning and Zoning Technical Staff Report recommends both driveways be gated and locked during non-business hours.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. General Plan. The proposed conditional use will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located. The existing wholesale nursery is a permitted use in the RR-DEO zoning district, being a farm per Section 103.A.53 of the Zoning Regulations. The goal of Policy 3.10 in the 2000-2020 General Plan is to direct commercial expansion to existing commercial crossroads in the Rural West. The proposed operations are consistent with this goal, being about 700 feet from the traffic circle of Ten Oaks Road and Triadelphia Road, an area of commercial uses, including gasoline service stations and a strip shopping center. The driveways seem adequate for sight distance. The landscape contractor operation will be sited toward an area of existing commercial uses, the Property's northern boundary will receive additional landscaping, and the hours of operations, including the non-standard hours of a snow removal accessory use, are consistent with the existing commercial uses that abut Route 32, a major arterial highway.

Based on the scale of the proposed uses, the operations' proposed hours and their proximity to other commercial uses the proposed conditional uses would not result in an incompatible intensity of use with the surrounding properties, given the adequacy of proposed buffers and setbacks. The proposed retail and contractor operations, including the snow removal accessory use, all storage uses, and minor vehicle repairs, will set back at least 100 feet from adjoining properties and buffered by the equivalent of a Type C landscape buffer as a condition

of approval. Additionally, the most intensive uses will be located in the Property's northern section, away from the recently approved subdivision adjoining the Property to the south, which will be further buffered by a Type C landscape buffer as a condition of approval.

B. Adverse Impact. The proposed use at the proposed location will not have adverse effects on vicinal properties beyond those ordinarily associated with such uses. Although the uses will be outdoors and would presumably generate some dust and noise during the hours of operation, most of the work will be off-site, and vicinal properties would be buffered by the existing woods and nursery stock.

The location, nature, and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones. The four primary structures will be located more than 100 feet from property lines and will have the same materials, appearance, and height as vicinal structures. Existing fences, the woods, the nursery stock, and proposed landscaping will help screen the uses.

There are no specific parking requirements for a landscape contractor or retail nursery conditional use. The revised plan shows 16 parking spaces for cars and 15 spaces for trucks on the landscape contracting area and five for the nursery use. It appears the ingress and egress will provide safe access with sight distance. There is an existing post and rail fence on the plan at the northerly driveway. The existing nursery driveway is, and the proposed landscape contractor driveway will be, adequately located, and screened from public roads, subject to the condition that both driveways shall be gated and locked during non-business hours.

II. Specific Criteria for a Landscape Contractor Conditional Use (Section 131.N.31)

1. The Property on which the uses will be operates is 33.211 acres in size, which exceed the five-acre minimum. The proposed conditional use complies with Section 131.n.31.a.
2. All storage structures and bins, parking, driveways, and areas open to retail customers are at least 100 feet from lot lines will not adversely affect neighboring properties due to visual impact, activity, noise, dust, fumes or other cause. The proposed conditional use complies with Section 131.n.31.b.
3. The location and design of the operation will not be a nuisance to neighboring properties due to noise, dust, or fumes. The storage bins, driveways, and parking areas for the landscape contracting operation will be located at least 100 feet from property lines. The landscaping contracting operation will adjoin a B-2 zoned commercial use to the north and will be screened from western views by existing woods. The proposed use complies with Section 131.n.31.c.
4. Buildings used for sales, storage, or offices will be screened or compatible in scale and character with other residential or agricultural structures in the vicinity. The proposed sales and storage bins are compatible in scale and character with vicinal agricultural buildings, per Exhibits 7.7, 7.8, and 7.9 and photographs included in the petition.
5. The following requirements apply to retail nurseries or greenhouses:

(a) The principal retail sale of wholesale nursery trees grown on the Property complies with Section 131.e(1). No sale of seeds, fertilizers, pesticides, firewood, hand tools, hand spraying and watering equipment, incidental seasonal items, general hardware or power equipment is proposed.

(b) The Property fronts on Ten Oaks Road, a designated major collector, according to the Hoard County General Plan. The proposed use complies with Section 131.e(2).

(c) No accessory sales of gardening or lawn care items are proposed. The proposed use complies with Section 131.e(3).

(d) Adequate landscaping will be provided to screen parking, storage, display and other activity areas related to the conditional use from residential properties. The amended Conditional Use Plan depicts a narrow stand of woods along the southern edge of the proposed Castleberry at Ten Oaks subdivision. Subject to the condition that a Type C landscape buffer be provided along this perimeter until just beyond the westernmost lot in Castleberry, the nursery use complies with complies with Section 131.e(4).

6. The following requirements apply to landscape contractors:

(a) Because the landscape contractor operation is not a home-based contractor as defined in these regulations and Section 128.C.2, a conditional use is required.

(b) The amended Conditional Use Plan shows a 100-foot setback line from lot lines and public roads. All structures, storage structures, and outdoor areas to be used for parking, loading, and storage of vehicles, equipment, tools, and supplies are delineated on the Plan, in accordance with Section 131.f(2).

(c) As concluded above, all outdoor parking and storage areas will be screened from neighboring properties by existing trees, the nursery trees, additional buffering, and fencing, in accordance Section 131.e(3), subject to the condition that a Type C equivalent landscape buffer be provided along the Property's northern perimeter from Ten Oaks Road for a 500-foot length.

(d) According to the evidence and testimony, the storage structures will be used for some equipment repair. Subject to the condition that only minor repairs to vehicles or equipment occur inside the structures, the proposed use complies with Section 131.e(4).

ORDER

Based upon the foregoing, it is this 29th day of October 2007, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

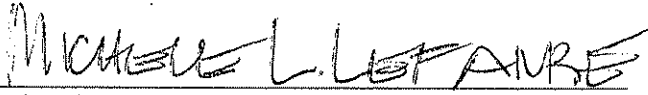
That the petition of Jack C. Fyock, Jr. for a Landscape Contractor Operation Conditional Use with limited retail sales and a snow removal accessory use, and a limited retail, Nursery Conditional Use in an RR-DEO Zoning District, is hereby **GRANTED**;

Provided, however, that:

1. The conditional use will apply only to the uses and structures as described in the petition and amended Conditional Use Plan dated October 1, 2007, and not to any other activities, uses, structures, or additions on the Property.
2. The snow removal accessory use must serve only clients of the landscape contractor operations and must not operate as an independent business or operation. The snow removal use is not subject to the normal business hours of operation set forth above. No additional trucks for the sole use of snow removal are permitted.
3. A Type C landscape buffer must be provided along the Property's southern perimeter, where it abuts the Castleberry subdivision and must continue to just beyond the westernmost lot in Castleberry.
4. A Type C equivalent landscape buffer must be provided along the Property's northern perimeter from Ten Oaks Road and extending westward for 500 feet.
5. The Petitioner must address all agency comments.
6. Both driveways must be gated and locked during non-business hours.

7. The Petitioner is permitted to make only minor repairs to vehicles or equipment, which must take place within a structure. Body work, engine rebuilding, engine reconditioning, painting, and similar activities are not permitted.
8. Activities taking place on the Property must be limited to those described in the Petitioners' testimony and written evidence.
9. The Petitioner must obtain a building permit for the construction of Structure "A" (as denoted on the amended Conditional Use Plan dated October 1, 2007) within two years of the date of this Decision and Order.
10. The Petitioner must obtain building permits for Structures "B," "C," and "D" (as denoted on the amended Conditional Use Plan dated October 1, 2007) within eight years of the date of this decision and order.
11. The Petitioner must commence the use of all requested conditional use activities within two years after the building permit for Structure "D" or the fourth structure is issued.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 10/31/07

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.